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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

WILLIAM R. MILLER,

Plaintiff,

-v-

STATE OF NEW YORK, DOCTOR A. DEPERIO,
NURSE ADMINISTRATOR G. MOHRING,
SUPERVISOR DAVID UNGER,

Defendants.

DECISION AND ORDER
10-CV-0897A



Plaintiff, William R. Miller, an inmate at the Wyoming Correctional Facility, filed a *pro se* complaint and an application to proceed *in forma pauperis* alleging that the defendants were negligent and denied him proper medical treatment for his back pain. Upon review of the complaint, pursuant to 28 U.S.C. § 1915(e)(2)(B) and 1915A, the Court dismissed the complaint with prejudice and without leave to amend on the basis that plaintiff failed to state a claim upon which relief could be granted under the Eighth Amendment and that leave to amend would be futile. (Docket No 3, Decision and Order.) The Decision and Order was entered on April 19, 2011, and the Judgment dismissing this action was entered on April 20, 2011. (Docket No. 4.) On the same date the Judgment was entered, the Court received and filed an amended complaint from plaintiff. (Docket No. 5.)


Because the “prisoner mail box rule” provides that a pleading or other document is “filed” on the date the prisoner-litigant places the document in the

hands of prison officials for mailing to the court, *see Houston v. Lack*, 487 U.S. 266, 271 (1988); *see also Dory v. Ryan*, 999 F.2d 679, 682 (2d Cir. 1993), *modified on reh'g*, 25 F.3d 81 (2d Cir. 1994), the Court is constrained to find that the amended complaint was filed prior to entry of the Decision and Order, and Judgment dismissing the complaint. Upon review of the amended complaint, however, *see* 28 U.S.C. § § 1915(e)(2)(B) and 1915A, the Court finds that there are no additional material allegations set forth in the amended complaint that would lead the Court to conclude that plaintiff states an Eighth Amendment claim actionable under 42 U.S.C. § 1983. Accordingly, and for the same reasons set forth in the Court's original Decision and Order dismissing the complaint, plaintiff's amended complaint is dismissed with prejudice and the Court finds that leave to amend would be futile.

IT HEREBY IS ORDERED, that the amended complaint is dismissed with prejudice; and

FURTHER, that leave to appeal to the Court of Appeals as a poor person is denied because the Court finds that an appeal from this Order would not be taken in good faith.

IT IS SO ORDERED.



HONORABLE RICHARD J. ARCARA
DISTRICT JUDGE
UNITED STATES DISTRICT COURT

Dated: Oct. 27, 2011